

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

C&K MARINE LLC, an Alaska limited liability  
company,

Plaintiff,

v.

CALENDAR CONSTRUCTION, INC., a  
Washington corporation d/b/a Colony Sand &  
Gravel and RYAN COSTANTI and JANE DOE  
COSTANTI and the marital community thereof,

Defendants.

NO.10-cv-01561-RSL

AMENDED COMPLAINT FOR  
BREACH OF CONTRACT

C&K Marine LLC ("C&K"), for its Complaint against the Defendant Calendar Construction, Inc., a Washington corporation doing business as Colony Sand & Gravel, and Ryan Costanti and Jane Doe Costanti, husband and wife, alleges as follows:

**I. PARTIES**

1. C&K is an Alaska limited liability company with its principal place of business in Anchorage, Alaska.

1        2.        Upon information and belief, C&K alleges that Calendar Construction, Inc.  
2 (“Calendar”) is a Washington corporation with its principal place of business in Bow,  
3 Washington. C&K reasonably believes, and therefore alleges, that Calendar does business as  
4 Colony Sand & Gravel (“Colony”).

5        3.        Upon information and belief, C&K alleges that Ryan Costanti and Jane Doe Costanti  
6 (collectively “Costanti”) are husband and wife residing in the state of Washington. Costanti’s  
7 actions complained of in this lawsuit were done for the benefit of the marital community.

8  
9                    **II. JURISDICTION AND VENUE**

10        4.        The dispute concerns a maritime contract for services and transportation of materials  
11 by sea. The contract provides that the sole venue for any litigation shall be the United States  
12 District Court located in Seattle, Washington. Jurisdiction and venue are properly before this  
13 Court under 28 U.S.C. § 1333(1).

14                    **III. BREACH OF CONTRACT**

15        5.        C&K is a project management firm that provides vessels for transporting goods and  
16 materials.

17        6.        On April 28, 2010, Colony hired C&K to transport sand and gravel (“cargo”) from  
18 Seattle, Washington to Dutch Harbor, Alaska. The terms of the agreement were reduced to a  
19 written contract (“Contract”). The parties to the Contract were ostensibly C&K and Colony.  
20 Costanti signed the contract as Colony’s president.

21        7.        Colony Sand & Gravel is not a registered corporation, limited liability company or  
22 partnership and does not have a separate legal existence. Calendar does business in Colony’s  
23 name and is the real party in interest to the Contract.

24        8.        Costanti did not disclose that Calendar was doing business in Colony’s name and  
that Calendar was actually the real party in interest to the Contract. When signing the Contract

1 as Colony's "president," Costanti was acting as the agent for an undisclosed principal; *i.e.*,  
2 Calendar. As Calendar's undisclosed agent, Costanti is jointly and severally liable for  
3 Calendar's breach of the Contract.

4 9. C&K arranged for the cargo to be transported from Seattle, Washington to Dutch  
5 Harbor, Alaska using a tug boat and two barges. The contract price was \$5,500.00 per day for  
6 the tug and \$2,100.00 per day for each barge. Calendar was also responsible for related costs  
such as fuel, towing assist charges and customs charges.

7 10. The Contract required Calendar to pay half the estimated cost upfront and the  
8 remaining balance when the cargo arrived in Dutch Harbor. Other amounts due under the  
9 Contract were to be invoiced upon completion of the services and paid within 30 days. The  
10 Contract provides that unpaid balances accrue interest at 1% per month.

11 11. In May 2010, Calendar paid two invoices for work performed prior to the arrival of  
12 the cargo in Dutch Harbor. In June 2010, C&K delivered the cargo to Dutch Harbor and sent  
13 Calendar a final invoice for \$197,808.82. Calendar did not pay this final invoice and, despite  
repeated requests, refuses to pay the remaining \$197,808.82 owed to C&K.

14 12. The Contract required Calendar to pay for fuel and lubricants consumed by the tug  
15 used to transport the cargo. The unpaid fuel charges for the job were \$57,435.57. On or about  
16 July 15, 2010, C&K sent an invoice to Calendar for this amount. Calendar did not pay this fuel  
17 invoice and, despite repeated requests, refuses to pay the remaining \$57,435.57 owed for fuel.

18 13. Calendar's failure to pay the final invoice and fuel charges constitutes a material  
19 breach of the Contract. As a result of Calendar's breach of the Contract, C&K has suffered  
damages in an amount to be proven at trial, but not less than \$255,244.39

20 14. Costanti signed the Contract as the agent of Calendar, which was an undisclosed  
21 principal. As the agent of an undisclosed principal, Costanti is jointly and severally liable for  
22 Calendar's breach of the Contract. Costanti is liable to C&K for damages in an amount to be  
23 proven at trial, but no less than \$255,244.39

**IV. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff C&K prays for the following relief against Calendar and Costanti, jointly and severally:

- A. For damages in an amount to be proven at trial, but not less than \$255,244.39;
- B. For attorneys' fees and costs incurred in this action, as provided by applicable law;
- C. For permission to amend its pleadings to conform to proof at trial; and
- D. For such other and further relief as this Court may deem just.

DATED this 30<sup>th</sup> day of September, 2010 at Seattle, Washington.

YOUNG deNORMANDIE, P.C.

s/ John G. Young

State Bar Number 12890

s/ Luke M. LaRiviere

State Bar Number 32039

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